



Virginia  
Regulatory  
Town Hall

## Proposed Regulation Agency Background Document

<b>Agency Name:</b>	Virginia Department of Social Services
<b>VAC Chapter Number:</b>	22 VAC 40-700
<b>Regulation Title:</b>	Child Protective Services Central Registry Information
<b>Action Title:</b>	Conforming Amendments
<b>Date:</b>	June 19, 2002

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

### Summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

This regulation establishes criteria for determining when identifying information on individuals involved in child abuse and neglect investigations should be entered into the Child Abuse and Neglect Central Registry (Central Registry) by local departments of social services and how long the information should be retained in the Central Registry by the state agency. The *Code of Virginia* requires that the State Board of Social Services prescribe by regulation what information shall be contained in the Central Registry.

## Basis

*Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.*

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This action is the result of an approved Executive Order 25 (1998) regulation review. *Code of Virginia*, Sections 63.1-25 and 63.1-248.1, *et seq.* provide statutory authority to the State Board of Social Services to promulgate the regulation regarding the Central Registry. With these amendments, this regulation will not exceed the scope of the mandate.

## Purpose

*Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.*

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Amendments are necessary to that this regulation is consistent with the regulation entitled Child Protective Services (22 VAC 40-705-10 *et seq.*), which requires “Preponderance of the Evidence” for Founded Disposition; and to ensure consistency with the Virginia Court of Appeals decision of *Jackson v. Marshall*. That court decision determined that only categories of “Founded” and “Unfounded” are allowed under *Code of Virginia*, Section 63.1-248. The Department officially ceased use of the “Reason to Suspect” category on March 9, 1995, as a result of this court decision, and purged all such findings from the Central Registry. This action is the result of an approved Executive Order 25 (1998) regulation review.

This regulation is essential to protect the health, safety or welfare of citizens. Unless this regulation is consistent with the law and other regulations dealing with child protective services, individuals who have abused or neglected a child will not be adequately tracked, and abusers and neglectors would be hired in settings where they would have access to children.

## Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.*

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This regulation tracks individuals who have abused or neglected a child. Any person who is determined by child protective services (CPS) to have committed an act of child abuse or neglect in Virginia, and any child determined to be a victim of same, may have information about his identity and about the abuse/neglect maintained in the Central Registry for a time period established in the regulation. Such persons may include parents (birth, step, foster or adoptive), other family members, childcare providers, teachers and anyone else determined to have been acting in a caretaker role when the abuse/neglect occurred. Central Registry searches (for other than a CPS investigation) cannot be conducted unless the individual being searched has authorized the search or a court has ordered the search.

Persons whose names are in the Central Registry are not allowed to be employed in the day-to-day operations of a child welfare agency. Section 63.1-195 of the *Code of Virginia* defines child welfare agencies as a child day center, child day center system, child-placing agency, child caring institution, family day home, family day system, or independent foster home. Identification of individuals with a history of child abuse/neglect prior to employment in a child welfare agency would reduce the opportunities for such individuals to abuse additional children, and may make the children in Virginia's families safer. When there is a history of child abuse or neglect for a given caretaker, or a given victim child, and that history is made known to child protective services workers when conducting future investigations involving the same individuals, more prudent decisions can be made to ensure the safety of all involved victim children.

## Issues

*Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.*

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The primary advantage to the public with this regulation is the protection of children from abusers and neglectors. The primary advantage to local departments of social services and the Department of Social Services and the Commonwealth is the reduction of risk of liability if an abuser or neglector is hired and should further abuse or neglect

children. There are no disadvantages to the public, to local departments, the Department of Social Services or to the Commonwealth with these amendments.

### Fiscal Impact

*Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.*

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Amendments to this regulation will have no fiscal impact to the Commonwealth or to the public.

### Detail of Changes

*Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or cross-walk - of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.*

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22 VAC 40-700-10. Definitions.

The definition of "Founded" is changed from "clear and convincing" to "by a preponderance of evidence," that child abuse or neglect has occurred, thus making this regulation consistent with other CPS regulations.

The definition for "Reason to suspect" is deleted, because the 1995 Virginia Court of Appeals decision of *Jackson v. Marshall* eliminated this type of disposition.

22VAC 40-700-30. Maintenance of identifying information.

Reference to maintenance of information as a result of a disposition of "reason to suspect" is eliminated from this regulation.

### Alternatives

*Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.*

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Since the last review of this regulation in 1995, there were two extensive reviews completed on the entire child protective services program, which included looking at the Central Registry: (1) a legislative subcommittee fulfilling House Joint Resolution 502 (1995), and (2) the State Board of Social Services subcommittee on child protective services. Although many recommendations were made as a result of these reviews, including new CPS regulations, neither of these reviews produced a recommendation to change the Central Registry regulation.

**Public Comment**

*Please summarize all public comment received during the NOIRA comment period and provide the agency response.*

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There was no public comment received during the NOIRA comment period.

**Clarity of the Regulation**

*Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.*

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This regulation is clearly written, concise and easily understandable by the individuals and entities affected. This regulation is short and limited in scope. There are no recommendations for improving clarity.

**Periodic Review**

*Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.*

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The date for the next review of this regulation will be three years after this regulation completes the Administrative Process Act procedures for amendments to become final.

**Family Impact Statement**

*Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of*

*responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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This regulation should reassure families that children in Virginia are safer when abusive or neglectful caretakers' names are in the Central Registry. Persons whose names are in the Central Registry are not allowed to be employed in the day-to-day operations of a child welfare agency. Section 63.1-195 of the *Code of Virginia* defines child welfare agencies as a child day center, child day center system, child-placing agency, child caring institution, family day home, family day system, or independent foster home. Identification of individuals with a history of child abuse/neglect prior to employment in a child welfare agency would reduce the opportunities for such individuals to abuse additional children, and may make the children in Virginia's families safer. When there is a history of child abuse or neglect for a given caretaker, or a given victim child, and that history is made known to child protective services workers when conducting future investigations involving the same individuals, more prudent decisions can be made to ensure the safety of all involved victim children.